

1 RANDALL S. LUSKEY (SBN: 240915)

2 rluskey@paulweiss.com

3 **PAUL, WEISS, RIFKIND, WHARTON**
4 **& GARRISON LLP**

5 535 Mission Street, 24th Floor

6 San Francisco, CA 94105

7 Telephone: (628) 432-5100

8 Facsimile: (628) 232-3101

9 ROBERT ATKINS (*Pro Hac Vice* admitted)

10 ratkins@paulweiss.com

11 CAITLIN E. GRUSAUSKAS (*Pro Hac Vice* admitted)

12 cgrusauskas@paulweiss.com

13 ANDREA M. KELLER (*Pro Hac Vice* admitted)

14 akeller@paulweiss.com

15 **PAUL, WEISS, RIFKIND, WHARTON**
16 **& GARRISON LLP**

17 1285 Avenue of the Americas

18 New York, NY 10019

19 Telephone: (212) 373-3000

20 Facsimile: (212) 757-3990

21 *Attorneys for Defendants*

22 UBER TECHNOLOGIES, INC.;

23 RASIER, LLC; and RASIER-CA, LLC

24 *[Additional Counsel Listed on Signature Page]*

25 **UNITED STATES DISTRICT COURT**
26 **NORTHERN DISTRICT OF CALIFORNIA**
27 **SAN FRANCISCO DIVISION**

28 IN RE: UBER TECHNOLOGIES,
INC., PASSENGER SEXUAL
ASSAULT LITIGATION

MDL No. 3084 CRB

Judge: Honorable Charles Breyer

29 This Document Relates to:

30 *Kelly Cowsert v. Uber Technologies,*
31 *Inc., et al.*

32 Case No.: 3:23-cv-05110-CRB

DEFENDANTS' THIRD-PARTY COMPLAINT

Defendants and Third-Party Plaintiffs Uber Technologies, Inc.; Rasier, LLC; and Rasier-CA, LLC (“Defendants” and “Third-Party Plaintiffs”) by and through their attorneys, hereby allege the following against Patrick Shamwama (“Third-Party Defendant”):

GENERAL ALLEGATIONS

1. Defendant and Third-Party Plaintiff Uber Technologies, Inc. is a California corporation that is registered with and conducts business within the State of California.

2. Defendant and Third-Party Plaintiff Rasier, LLC is a limited liability company that is registered with and conducts business within the State of California.

3. Defendant and Third-Party Plaintiff Rasier-CA, LLC is a limited liability company that is registered with and conducts business within the State of California.

4. Based on information and belief, Third-Party Defendant Patrick Shamwama is an individual residing in Jefferson City, Missouri.

5. Third-Party Plaintiffs Uber Technologies, Inc.; Rasier, LLC; and Rasier-CA, LLC are Defendants in the above-entitled action wherein Kelly Cowser (“Plaintiff”), seeks damages for injuries allegedly caused by Uber Technologies, Inc.; Rasier, LLC; and Rasier-CA, LLC and others, by way of the Plaintiff’s Original Complaint and Jury Demand, filed on July 10, 2023, United States District Court for the Western District of Missouri, Case No. 2:23-cv-04133, Plaintiff’s Short Form Complaint, filed on April 9, 2024, in the United States District Court for the Northern District of California, San Francisco Division, Case No. 3:23-cv-05110-CRB, and the Master Long Form Complaint filed on February 15, 2024, in the United States District Court for the Northern District of California, San Francisco Division, Case No. 3:23-md-3084-CRB (collectively, the “Complaint”). Third-Party Plaintiffs incorporate the Complaint herein for reference, and deny any fault or liability for causing Plaintiff’s alleged injuries or damages.

1 Defendant's use of the Uber App. Of particular relevance here, Third-Party Defendant agreed to
 2 indemnify and defend Third-Party Plaintiffs, including with respect to claims such as those asserted by
 3 Plaintiff in the Complaint against Third-Party Plaintiffs. The circumstances that give rise to Third-
 4 Party Defendant's contractual duty to indemnify and defend are the subject of Plaintiff's Complaint
 5 against Third-Party Plaintiffs.

6 13. On January 6, 2022, Third-Party Defendant entered into a Platform Access Agreement
 7 ("PAA") with Rasier, LLC. This PAA governed Third-Party Defendant's "access to [Third-Party
 8 Plaintiffs'] platform . . . which facilitates [Third-Party Defendant's] provision of rideshare or peer-to-
 9 peer transportation service . . . to account holders seeking to access certain types of P2P services . . .
 10 ." (**Exhibit A – Platform Access Agreement, Updated Jan. 1, 2022, p. 1**). It further granted Third-
 11 Party Defendant "a non-exclusive, non-transferable, non-sublicensable, non-assignable license, during
 12 the term of this Agreement, to use our Platform" that was "[s]ubject to the terms and conditions of this
 13 Agreement." (*Id.* ¶ 2.1). The PAA required the Third-Party Defendant, among other things, to comply
 14 with "all laws . . . that apply to [his] provision of Rides." (*Id.* ¶ 2.2).

15 14. In connection with the PAA, Third-Party Defendant also entered into an Indemnity
 16 Agreement with Rasier, LLC on January 8, 2020 and February 23, 2023. The Indemnity Agreement
 17 provides:
 18

19 To the maximum extent permitted by applicable law, you will
 20 indemnify, defend (at our option) and hold us and our affiliates and
 21 each of our and their respective officers, directors, employees,
 22 agents, or shareholders harmless from and against all claims,
 23 liabilities, expenses (including reasonable attorney's fees and
 24 related expenses), damages, penalties, fines, social security
 25 contributions and taxes ("*Losses*") asserted by a third party and
 26 arising out of or related to your breach or alleged breach of the
 27 Agreement or this Indemnity Agreement, your provision of Rides,
 28 your access to our Platform or your interaction with any third party.

(**Exhibit B—Indemnity Agreement, Updated Jan. 6, 2020, ¶ 1.1**).

1 15. Plaintiff's Complaint alleges, among other things, conduct entitling Plaintiff to
2 compensatory damages against Third-Party Plaintiffs. Specifically, Plaintiff's Complaint alleges that
3 on or about February 28, 2022, while Third-Party Defendant was providing her a ride using the Uber
4 App, Third-Party Defendant "began rubbing Plaintiff's breasts over her shirt as well as rubbing her
5 legs. Plaintiff continuously told him to stop, which he eventually did. However, Plaintiff's nephew
6 saw what was happening." (**Plaintiff's Original Compl. and Jury Demand, filed on July 10, 2023,**
7 **United States District Court for the Western District of Missouri, Case No. 2:23-cv-04133, ¶¶63-**
8 **64).**

9
10 16. The damages alleged by Plaintiff arise out of or relate to Third-Party Defendant's
11 alleged tortious or otherwise actionable conduct, which arises out of or relates to his breach of the PAA
12 and the Indemnity Agreement with Third-Party Plaintiffs, provision of rides, access to Third-Party
13 Plaintiffs' platform, and interaction with a third-party.

14 17. Third-Party Defendant's alleged tortious or otherwise actionable conduct is therefore
15 covered by the PAA and the Indemnity Agreement he entered into with Third-Party Plaintiffs and gives
16 rise to Third-Party Defendant's contractual duty to indemnify and defend.

17
18 18. Third-Party Plaintiffs deny liability for the events and occurrences described in
19 Plaintiff's Complaint.

20 19. Third-Party Defendant's alleged tortious or otherwise actionable conduct was the direct
21 and proximate cause of the damages alleged by Plaintiff.

22 20. As a result, if Third-Party Plaintiffs are found in some manner liable to Plaintiff in this
23 action under any theory of recovery, Third-Party Plaintiffs allege that their liability would be based
24 solely upon a derivative form of liability not resulting from their conduct and, therefore, are entitled to
25 complete indemnity from Third-Party Defendant.
26
27
28

1 solely upon a derivative form of liability not resulting from their conduct, and, therefore, are entitled
2 to complete indemnity from Third-Party Defendant.

3 29. Under the foregoing circumstances, Third-Party Plaintiffs are entitled to be fully
4 indemnified by Third-Party Defendant for any amounts which may in good faith be paid by way of
5 compromise, settlement, or judgment.

6 30. Third-Party Plaintiffs are further entitled to be held harmless and indemnified by Third-
7 Party Defendant for the reasonable costs incurred in the defense of this action and prosecuting this
8 Third-Party Complaint, and for attorneys' fees incurred herein.
9

10 **THIRD CAUSE OF ACTION**

11 **(Contribution)**

12 31. Third-Party Plaintiffs incorporate herein each allegation set forth above.

13 32. If Plaintiff has been injured or damaged as alleged in the Complaint, any such injuries
14 or damages were directly and proximately caused and contributed to by the negligence or other tortious
15 conduct of Third-Party Defendant, such that Third-Party Defendant is a tortfeasor, originally liable to
16 Plaintiff.
17

18 33. The fault, acts, or omissions of Third-Party Plaintiffs, if any, must be compared with
19 the fault, acts, or omissions of Third-Party Defendant or any other persons or parties.

20 34. Under the foregoing circumstances, any award of damages to Plaintiff pursuant to her
21 claims in the Complaint must be apportioned to, and be paid by, Third-Party Defendant according to
22 the degree of Third-Party Defendant's fault, acts, or omissions.
23

24 35. As a result, if Third-Party Plaintiffs are held liable to Plaintiff on any of the allegations
25 made in the Complaint, Third-Party Defendant, to the extent of Third-Party Defendant's fault, is
26 obligated to reimburse and will be liable to Third-Party Plaintiffs for any liabilities so assessed by way
27 of contribution. Accordingly, Third-Party Plaintiffs assert herein their rights to such
28

1 contribution. Specifically, Third-Party Plaintiffs assert that Third-Party Defendant is obligated to
2 provide an equitable contribution to any judgment or settlement herein awarded in direct proportion to
3 the amount of negligence or fault of the Third-Party Defendant.

4 **FOURTH CAUSE OF ACTION**

5 **(Declaratory Relief)**

6 36. Third-Party Plaintiffs incorporate herein each allegation set forth above.

7
8 37. Without in any way acknowledging any liability to Plaintiff, Third-Party Plaintiffs
9 allege that, if Third-Party Plaintiffs are ultimately held liable in this action, such liability will be the
10 direct and proximate result of the negligent or otherwise actionable conduct of Third-Party
11 Defendant. As a result, Third-Party Plaintiffs allege that Third-Party Defendant is obligated to fully or
12 partially indemnify Third-Party Plaintiffs for the sums that they may be compelled to pay as a result of
13 any damages, judgments, or other awards against Third-Party Plaintiffs in this action, if any, and to pay
14 Third-Party Plaintiffs' attorneys' fees and costs incurred in defending against the claims of Plaintiff in
15 this action and prosecuting the claims asserted by way of the Third-Party Complaint.
16

17 38. Third-Party Plaintiffs desire a judicial determination of the respective rights and duties
18 of Third-Party Plaintiffs and Third-Party Defendant with respect to the damages claimed in Plaintiff's
19 Complaint. In particular, Third-Party Plaintiffs desire a declaration of the respective liabilities of
20 Third-Party Plaintiffs and Third-Party Defendant for such damages, if any, and a declaration of Third-
21 Party Defendant's responsibilities to indemnify Third-Party Plaintiffs and to hold them harmless from
22 any sums that they may be compelled to pay, and for the attorneys' fees and costs Third-Party Plaintiffs
23 have already incurred and will incur in defending against Plaintiff's claims and prosecuting the claims
24 asserted by way of the Third-Party Complaint.
25

26 39. Such a declaration is necessary and appropriate at this time to enable Third-Party
27 Plaintiffs to ascertain their rights and duties with respect to the defense of this action and the payment
28

1 of any damages, judgment, or other awards that may be recovered against them by
2 Plaintiff. Furthermore, the claims of Plaintiff and the claims of Third-Party Plaintiffs arise out of the
3 same transaction and occurrence, and a determination of both in one proceeding is necessary and
4 appropriate to avoid the multiplicity of actions that would result if Third-Party Plaintiffs are required
5 to defend against the claims of Plaintiff in the Complaint and then bring a subsequent action against
6 Third-Party Defendant for indemnification and contribution of sums that Third-Party Plaintiffs may be
7 compelled to pay as a result of any damages, judgments, or other awards recovered by Plaintiff against
8 Third-Party Plaintiffs, if any.
9

10 **PRAYER**

11 Wherefore, Third-Party Plaintiffs respectfully pray for the following judgment:

12 1. For judgment against Third-Party Defendant on the First Cause of Action, awarding
13 Third-Party Plaintiffs total contractual indemnity for any amounts which may in good faith be paid by
14 Third-Party Plaintiffs to Plaintiff by way of compromise, settlement, or judgment;
15

16 2. For judgment against Third-Party Defendant on the Second Cause of Action, awarding
17 Third-Party Plaintiffs complete indemnity for any sum Third-Party Plaintiffs must pay to Plaintiff;

18 3. For judgment against Third-Party Defendant on the Third Cause of Action, in the form
19 of contribution based on Third-Party Defendant's proportionate share of fault on any sums adjudged
20 against Third-Party Plaintiffs, if any, in favor of Plaintiff herein;

21 4. For a judicial determination on the Fourth Cause of Action of the responsibilities of
22 Third-Party Defendant to fully or partially indemnify and hold Third-Party Plaintiffs harmless from
23 any damages, judgment, or other awards that may be recovered against Third-Party Plaintiffs by
24 Plaintiff on the Complaint pursuant to principles of indemnity or contribution;
25
26
27
28

1 5. For any other equitable decree or order required to apportion liability and damages, and
2 to ensure Third-Party Defendant reimburses Third-Party Plaintiffs for any payments they make to
3 Plaintiff in excess of Third-Party Plaintiffs' proportionate share of fault, if any;

4 6. That Third-Party Plaintiffs be awarded their attorneys' fees and costs incurred in this
5 action to the extent permitted by law; and

6 7. For any and such further relief as the Court may determine is just and proper.
7

8 DATED: November 5, 2024

Respectfully submitted,

9
10 **SHOOK, HARDY & BACON L.L.P.**

11 By: /s/ Michael B. Shortnacy

MICHAEL B. SHORTNACY

12 MICHAEL B. SHORTNACY (SBN: 277035)

13 mshortnacy@shb.com

14 **SHOOK, HARDY & BACON L.L.P.**

15 2121 Avenue of the Stars, Suite 1400

16 Los Angeles, CA 90067

Telephone: (424) 285-8330

Facsimile: (424) 204-9093

17 PATRICK OOT (*Pro Hac Vice*)

18 oot@shb.com

SHOOK, HARDY & BACON L.L.P.

19 1800 K St. NW Ste. 1000

20 Washington, DC 20006

21 Telephone: (202) 783-8400

Facsimile: (202) 783-4211

22 KYLE N. SMITH (*Pro Hac Vice* admitted)

23 ksmith@paulweiss.com

JESSICA E. PHILLIPS (*Pro Hac Vice* admitted)

24 jphillips@paulweiss.com

**PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP**

25 2001 K Street, NW

26 Washington DC, 20006

27 Telephone: (202) 223-7300

28 Facsimile: (202) 223-7420

Attorney for Defendants
UBER TECHNOLOGIES, INC.,
RASIER, LLC, and RASIER-CA, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28